

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Raquel Velasquez	Team: Squad #12	CCRB Case #: 201606983	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 08/12/2016 8:09 PM	Location of Incident: Marcy Avenue and Myrtle Avenue	Precinct: 79	18 Mo. SOL 2/12/2018	EO SOL 2/12/2018	
Date/Time CV Reported Fri, 08/12/2016 8:51 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 08/12/2016 8:51 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Emilio Ortega	06216	916969	079 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Rodney Hale	24629	933826	079 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Emilio Ortega	Abuse: PO Emilio Ortega refused to provide his name and shield number to § 87(2)(b)	
B.POM Emilio Ortega	Discourtesy: PO Emilio Ortega spoke discourteously to § 87(2)(b)	
C.POM Emilio Ortega	Force: PO Emilio Ortega used physical force against § 87(2)(b)	

Case Summary

On August 12, 2016, § 87(2)(b) filed this complaint with the CCRB, via the call processing system, on behalf of her § 87(2)(b) sons, § 87(2)(b) and § 87(2)(b). § 87(2)(b) did not witness this incident.

On August 12, 2016, at approximately 8:09 p.m., PO Emilio Ortega and PO Rodney Hale, from the 79th Precinct, stopped and arrested § 87(2)(b) for spitting on a sidewalk of a public street at Marcy Avenue and Myrtle Avenue in Brooklyn (**Board Review 01**). PO Ortega did not provide his name and shield number to § 87(2)(b) and allegedly used profanity against him (**Allegations A and B**). PO Ortega and PO Hale handcuffed § 87(2)(b) and walked him to the marked car. § 87(2)(b) refused to enter the marked car and PO Ortega punched § 87(2)(b) in the stomach/groin area twice (**Allegation C**).

§ 87(2)(b) recorded a portion of the incident via his cellphone (**Board Review 02 and 03**).



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§ 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation on behalf of § 87(2)(b).
- § 87(2)(b) and § 87(2)(b) did not file a Notice of Claim regarding this incident (**Board Review 04**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the second complaint filed by § 87(2)(b) and involving § 87(2)(b) and § 87(2)(b).
- PO Emilio Ortega has been a member of the service for twenty-one years and there are four substantiated CCRB allegations against him.
 - In case number 201405942, a vehicle stop, vehicle search, and physical force (punched a civilian in the face) allegations were substantiated. The CCRB recommended charges and the case is assigned to the CCRB's Administrative Prosecution Unit.
 - In case number 201407876, an allegation of abuse of authority (refusal to process civilian complaint), was substantiated. The CCRB recommended and the NYPD issued command discipline.

Findings and Recommendations

Allegations not pleaded

- Stop and Threat of arrest: These allegations were not pled because § 87(2)(b) acknowledged spitting on the ground and the incident resulted in an arrest.
- Refusal to provide name and shield number: While § 87(2)(b) stated that § 87(2)(b) asked both officers for their names and shield numbers, § 87(2)(b) established that he only asked PO Ortega for his name and shield number. Therefore, a refusal to provide name and shield number allegation was not pled against PO Hale.

Allegation A: Abuse of Authority- PO Emilio Ortega refused to provide his name and shield number to § 87(2)(b)

§ 87(2)(b) stated that he asked PO Ortega for his name and badge number approximately five to six times throughout the incident and PO Ortega did not provide the information (**Board Review 08**).

§ 87(2)(b) also stated that § 87(2)(b) repeatedly asked PO Ortega for his name and shield number (**Board Review 07**).

The video recording shows § 87(2)(b) ask PO Ortega for his name thirteen times and for his shield number eleven times. During the requests, PO Ortega is seen walking § 87(2)(b) walking to the marked car and then attempting to place him inside. PO Ortega says twice to § 87(2)(b) “You can have it,” but he never provides the information. Later in the video, § 87(2)(b) states PO Ortega’s name and shield number (**Board Review 02 and 03**).

PO Ortega stated that § 87(2)(b) might have asked him for his name and shield number and that he believed he provided his information. PO Ortega did not recall how many times § 87(2)(b) asked for his information. When confronted with the video recording, PO Ortega recalled the requests for his name and shield number and confirmed that he did not provide the information before, after, or during the video recording. PO Ortega stated that he did not provide his name or shield number because he was in the process of an arrest (**Board Review 09**).

PO Hale also initially stated that § 87(2)(b) did not ask PO Ortega for his name or shield number. After reviewing the video evidence, PO Hale stated that he did not recall hearing the requests (**Board Review 10**).

Patrol Guide Procedure 203-09 states that officers must “courteously provide [their] rank, name, shield number, and command, or otherwise provide them, to anyone who requests [them] to do so. Officers must also allow the person ample time to note this information” (**11 Board Review**).

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Allegation B: Discourtesy- PO Emilio Ortega spoke discourteously to § 87(2)(b)

During one of § 87(2)(b)'s requests to obtain PO Ortega's name and shield number, PO Ortega allegedly responded, "I don't have to tell you shit" (**Board Review 08**).

§ 87(2)(b) did not corroborate the discourteous statement (**Board Review 07**).

The video recording, which begins with § 87(2)(b) being handcuffed and ends with him being placed in the marked car, does not capture this allegation (**Board Review 02 and 03**).

PO Ortega did not recall making the alleged discourteous statement (**Board Review 09**)

PO Hale denied hearing PO Ortega make the alleged discourteous statement (**Board Review 10**).

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Allegation C: Force- PO Emilio Ortega used physical force against § 87(2)(b)

It is undisputed that PO Ortega stopped § 87(2)(b) for spitting on a sidewalk. It is undisputed at § 87(2)(b) did not possess identification and was therefore going to be escorted to the 79th Precinct stationhouse to be properly identified.

§ 87(2)(b) stated that he gripped his hands together when PO Ortega told him to place them behind his back. However, PO Ortega and PO Hale pulled his hands apart and handcuffed him right away. PO Ortega and PO Hale then walked him to the marked car. § 87(2)(b) briefly stopped walking, but PO Ortega held him by his shoulder and pushed him forward to continue walking. The officers then opened the marked car door and § 87(2)(b) stood with his back against the marked car refusing to get inside. PO Hale pushed the left side of § 87(2)(b)'s stomach into the car. PO Ortega then punched § 87(2)(b) once in the groin and punched him once in the stomach. § 87(2)(b) yelled, "Ah, he punched me in my balls," and he crouched down from the pain. PO Ortega then pushed him into the marked car successfully. Two unidentified passersby, a male and female, observed the incident. § 87(2)(b) was transported to the 79th Precinct stationhouse and he was released shortly thereafter. § 87(2)(b) had pain in his groin and a red mark in his groin and stomach due to the punches. However, he did not take pictures of his injuries nor seek medical attention (**Board Review 07**).

§ 87(2)(g) § 87(2)(b) added that the officers pushed § 87(2)(b)'s chest into the marked car and then PO Ortega punched § 87(2)(b) in the groin and stomach area two to three times, consecutively. § 87(2)(b) screamed, "Ah, you punched me in my balls," and bent his body. PO Ortega and PO Hale then pushed § 87(2)(b) into the car. § 87(2)(b) did not mention the two unidentified passersby who observed the incident (**Board Review 08**).

The video recording shows PO Ortega and PO Hale standing on § 87(2)(b)'s left and right sides, respectively, holding onto his arms and pushing him into the marked car. § 87(2)(b) is in handcuffs facing the marked car, but does not get inside. An unidentified female voice states,

“Officer, you’re a little rusty on him.” Only the officers’ backs are seen for approximately ten seconds. The camera moves to the left and depicts § 87(2)(b) is standing with his back against the marked car. PO Ortega has his right hand on § 87(2)(b)’s left shoulder and his left hand is on top of the car door. PO Ortega states, “Get in there. Go inside. It’s easier this way. Yup, get inside. Yes, you can.” § 87(2)(b) responds, “No, I’m not doing all that. No.” PO Ortega moves his left hand from the car door and leans it downward. PO Ortega looks down and a lean towards § 87(2)(b) but it is not clear what he is doing because the car door is in the way. Simultaneously, § 87(2)(b) yells, “Ah, ah. He just punched me in my balls.” Both officers then push § 87(2)(b) into the marked car successfully. § 87(2)(b) continues yelling, “Ahh. Ahh. Ahh. Ahh.” PO Ortega closes the rear passenger door. § 87(2)(b) asks, “What is wrong with you?” An unidentified male voice states, “Really great work, guys” (**Board Review 02 and 03**).

PO Ortega stated that § 87(2)(b) placed his hands in front of his chest when PO Ortega told him that he was going to be handcuffed. PO Ortega did not recall telling § 87(2)(b) to put his hands behind his back. PO Ortega did not recall who handcuffed § 87(2)(b) and he did not recall if both he and PO Hale participated in handcuffing him. However, PO Ortega stated that § 87(2)(b)’s arms were grabbed and placed behind his back without a struggle, and he was handcuffed approximately 30 seconds later. PO Ortega and PO Hale walked § 87(2)(b) to the marked car and attempted to place him inside by grabbing his shoulders. § 87(2)(b) refused to get in the marked car, but he was placed inside twenty to thirty seconds later. PO Ortega denied grabbing § 87(2)(b) anywhere else on his body and he denied doing anything else other than grabbing his shoulders. When questioned, PO Ortega stated that he might have touched and pushed into § 87(2)(b)’s stomach area when he tried to get him in the marked car because he refused to get inside. PO Ortega denied punching § 87(2)(b) in the stomach or groin. PO Ortega did not recall § 87(2)(b) saying that he had struck him in his “balls.” § 87(2)(b) only complained that PO Ortega was too rough with him while placing him into the marked car at the front desk of the stationhouse. However, PO Ortega did not recall if § 87(2)(b) made specific allegations. When confronted with the video recording, PO Ortega stated that he placed his hand on § 87(2)(b)’s waist area to get him into the marked car and he repeated that he did not punch § 87(2)(b) in the stomach. PO Ortega added that there were two passersby who stated that they were recording the incident (**Board Review 09**).

PO Hale corroborated that § 87(2)(b) curled up his arms in front of his chest when PO Ortega told him that he was going to be taken to the stationhouse. PO Hale did not recall if they told § 87(2)(b) to place his hands behind his back, but both officers grabbed his arms, placed them behind his back, and handcuffed him without struggle. PO Hale and PO Ortega walked § 87(2)(b) to the marked car and told him to get inside. § 87(2)(b) complied approximately two seconds later. As § 87(2)(b) got in the marked car, he screamed, “Ah, he hit me in the nuts. He hit me in the nuts.” PO Hale did not know why § 87(2)(b) stated this. PO Hale denied seeing PO Ortega touch any other part of § 87(2)(b)’s body, besides his arms, to get him inside the marked car. PO Hale denied seeing PO Ortega touch or punch § 87(2)(b) in the stomach or groin. PO Hale corroborated that there were two passersby who observed the incident (**Board Review 10**).

Patrol Guide Procedure 221-01 states an officer may apply no more than the reasonable force necessary to gain control of a person who is resisting (**Board Review 12**).

§ 87(2)(g)

[REDACTED]

Squad: **12**

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date